

1
2
3
4
5
6
7
8
9
10
11
12
**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DENNY LAKE, *et al.*

Defendants.

) Case No. SACV 15-00585-CJC (JPRx)

) **ENTRY OF DEFAULT
JUDGMENT AND FINAL ORDER
FOR PERMANENT INJUNCTION
AND MONETARY JUDGMENT
AGAINST DEFENDANTS C.C.
ENTERPRISES, INC. AND D.N.
MARKETING, INC.**

) Judge: Hon. Cormac J. Carney
Courtroom 9B
)

1 Plaintiff Federal Trade Commission (“Commission”) filed its Complaint for
2 Permanent Injunction and Other Equitable Relief on April 14, 2015, pursuant to
3 Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15
4 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse
5 Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the 2009
6 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678
7 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability
8 Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123
9 Stat. 1734, 1763-64 (May 22, 2009) (“Credit Card Act”), and amended by the
10 Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-
11 203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) (“Dodd-Frank Act”),
12 12 U.S.C. § 5538.

13 The Commission has moved for default judgment against defendants C.C.
14 Enterprises, Inc. (also d/b/a HOPE Services, Trust Payment Center, and Retention
15 Divisions) (“C.C. Enterprises”) and D.N. Marketing, Inc. (also d/b/a HAMP
16 Services and Trial Payment Processing) (“D.N. Marketing”) (collectively
17 “Corporate Defendants”) for failure to file answers in this action. Upon
18 consideration of the FTC’s Motion for Default Judgment, the Court GRANTS the
19 FTC’s Motion for Default Judgement, and THEREFORE, IT IS ORDERED as
20 follows

21 **FINDINGS**

- 22 1. This Court has jurisdiction over this matter.
- 23 2. Venue is proper in this district.
- 24 3. The Complaint charges that, with respect to the sale of Mortgage
25 Assistance Relief Services (“MARS”), Corporate Defendants participated in
26 deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. §
27 45, the MARS Rule, 12 C.F.R. § 1015, and the Telemarketing Sales Rule (“TSR”),
28

1 16 C.F.R. Part 310. These deceptive acts and practices included, without
2 limitation, falsely stating that consumers were approved for government-backed
3 home loan modifications and taking advance fees for MARS.

4 4. Corporate Defendants' activities as alleged in the Complaint are in or
5 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15
6 U.S.C. § 44.

7 5. Corporate Defendants had proper notice of this lawsuit. On April 16,
8 2015, the FTC properly served them with the Summons and Complaint. DE 37,
9 38.

10 6. Corporate Defendants have failed to answer or otherwise respond to
11 the Complaint.

12 7. The Clerk entered defaults against Corporate Defendants on July 24,
13 2015. DE 80.

14 8. The FTC is now entitled to default judgement as to Corporate
15 Defendants pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

16 9. The allegations in the Complaint are taken as true against Corporate
17 Defendants. Those allegations establish that Corporate Defendants are liable for
18 injunctive and equitable monetary relief for violations of Section 5 of the FTC Act,
19 15 U.S.C. § 45; the MARS Rule, 12 C.F.R. §§ 1015.3(a), 1015.3(b)(1)-(4),
20 1015.4(a)(1)-(2), 1015.4(b)(1)-(3), 1015.4(c), 1015.5(a); and Sections
21 310.3(a)(2)(iii), 310.3(a)(2)(iv), and 310.4(a)(4) of the TSR, 16 C.F.R. §§
22 310.3(a)(2)(iii), 310.3(a)(2)(iv), 310.4(a)(4).

23 10. The Declarations of Emil T. George (DE 54-10) and Thad Meyer (DE
24 113-3), filed by the FTC in support of its Ex-Parte Application for Temporary
25 Restraining Order and Motion for Summary Judgment Against Defendant Denny
26 Lake respectively, establish that Corporate Defendants caused consumer injury in
27 the amount of Two Million, Three Hundred Forty-Nine Thousand, Eight Hundred
28

1 Eighty-Five Dollars (\$2,349,885.00). Therefore, the Commission is entitled to an
2 award of equitable monetary relief against the Corporate Defendants in this
3 amount.

4 11. Entry of this Final Judgement is in the public interest.

5 **DEFINITIONS**

6 For the purposes of this Order, the following definitions apply:

7 A. “**Assisting others**” includes:

8 1. performing customer service functions, including receiving or
9 responding to consumer complaints;

10 2. formulating or providing, or arranging for the formulation or
11 provision of, any advertising or marketing material, including any telephone sales
12 script, direct mail solicitation, or the design, text, or use of images of any Internet
13 website, email, or other electronic communication;

14 3. formulating or providing, or arranging for the formulation or
15 provision of, any marketing support material or service, including web or Internet
16 Protocol addresses or domain name registration for any Internet websites, affiliate
17 marketing services, or media placement services;

18 4. providing names of, or assisting in the generation of, potential
19 customers;

20 5. performing marketing services of any kind including, but not
21 limited to, telemarketing;

22 6. performing billing or payment services of any kind;

23 7. acting or serving as an owner, officer, director, manager, or
24 principal of any entity.

25 B. “**Corporate Defendants**” means C.C. Enterprises. Inc. (also d/b/a
26 HOPE Services, Trust Payment Center, and Retention Divisions) and D.N.
27 Marketing, Inc. (also d/b/a HAMP Services and Trial Payment Processing).
28

1 C. **“Credit-related financial product or service”** means any product,
2 service, plan, or program represented, expressly or by implication, to:

3 1. provide any consumer, arrange for any consumer to receive, or
4 assist any consumer in receiving, a loan or other extension of credit;

5 2. provide any consumer, arrange for any consumer to receive, or
6 assist any consumer in receiving, credit, debit, or stored value cards;

7 3. improve, repair, or arrange to improve or repair, any
8 consumer’s credit record, credit history, or credit rating; or

9 4. provide advice or assistance to improve any consumer’s credit
10 record, credit history, or credit rating.

11 D. **“Defendants”** mean individual defendants Chad Caldaronello, Brian
12 Pacios, Justin Moreira, Derek Nelson, Denny Lake; relief defendant Cortney
13 Gonsalves; and Corporate Defendants.

14 E. **“Person”** means a natural person, organization, or other legal entity,
15 including a corporation, partnership, proprietorship, association, cooperative, or
16 any other group or combination acting as an entity.

17 F. **“Secured or unsecured debt relief product or service”** means:

18 1. With respect to any mortgage, loan, debt, or obligation between
19 a person and one or more secured or unsecured creditors or debt collectors, any
20 product, service, plan, or program represented, expressly or by implication, to:

21 a. stop, prevent, or postpone any mortgage or deed of
22 foreclosure sale for a person’s dwelling, any other sale of collateral, any
23 repossession of a person’s dwelling or other collateral, or otherwise save a person’s
24 dwelling or other collateral from foreclosure or repossession;

25 b. negotiate, obtain, or arrange a modification, or
26 renegotiate, settle, or in any way alter any terms of the mortgage, loan, debt, or
27 obligation, including a reduction in the amount of interest, principal balance,
28

1 monthly payments, or fees owed by a person to a secured or unsecured creditor or
2 debt collector;

3 c. obtain any forbearance or modification in the timing of
4 payments from any secured or unsecured holder or servicer of any mortgage, loan,
5 debt, or obligation;

6 d. negotiate, obtain, or arrange any extension of the period
7 of time within which a person may (i) cure his or her default on the mortgage, loan,
8 debt, or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation, (iii)
9 redeem a dwelling or other collateral, or (iv) exercise any right to reinstate the
10 mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;

11 e. obtain any waiver of an acceleration clause or balloon
12 payment contained in any promissory note or contract secured by any dwelling or
13 other collateral; or

14 f. negotiate, obtain, or arrange (i) a short sale of a dwelling
15 or other collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of
16 a mortgage, loan, debt, or obligation other than a sale to a third party that is not the
17 secured or unsecured loan holder.

18 The foregoing shall include any manner of claimed assistance, including auditing
19 or examining a person's application for the mortgage, loan, debt, or obligation.

20 2. With respect to any loan, debt, or obligation between a person
21 and one or more unsecured creditors or debt collectors, any product, service, plan,
22 or program represented, expressly or by implication, to:

23 a. repay one or more unsecured loans, debts, or obligations;

24 or

25 b. combine unsecured loans, debts, or obligations into one
26 or more new loans, debts, or obligations.

G. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of any product, service, plan, or program by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

ORDER

I. BAN ON SECURED AND UNSECURED DEBT RELIEF PRODUCTS AND SERVICES

IT IS ORDERED that Corporate Defendants are permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, or selling, or assisting others in the advertising, marketing, promoting, offering for sale, or selling, of any secured or unsecured debt relief product or service.

II. BAN ON CREDIT-RELATED FINANCIAL PRODUCTS AND SERVICES

IT IS FURTHER ORDERED that Corporate Defendants are permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, or selling, or assisting others in the advertising, marketing, promoting, offering for sale, or selling, of any credit-related financial product or service.

III. BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Corporate Defendants are permanently restrained and enjoined from engaging or participating in telemarketing, directly or through an intermediary, including, but not limited to, by consulting, brokering, planning, investing, marketing, or by providing customer service, billing, or payment services.

IV. PROHIBITION AGAINST MISREPRESENTATIONS RELATING TO ANY PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Corporate Defendants, their officers, agents, employees, and attorneys, and all others in active concert or participation

1 with any of them, who receive actual notice of this Order, whether acting directly
2 or indirectly, in connection with the advertising, marketing, promoting, offering for
3 sale, or selling of any product, service, plan, or program, are permanently
4 restrained and enjoined from misrepresenting, or assisting others in
5 misrepresenting, expressly or by implication:

6 A. any material aspect of the nature or terms of any refund, cancellation,
7 exchange, or repurchase policy, including the likelihood of a consumer obtaining a
8 full or partial refund, or the circumstances in which a full or partial refund will be
9 granted to the consumer;

10 B. that any person is affiliated with, endorsed or approved by, or
11 otherwise connected to any other person, government entity, or any program,
12 including but not limited to any public, non-profit, or other non-commercial
13 program;

14 C. the nature, expertise, position, or job title of any person who provides
15 any product, service, plan, or program;

16 D. the person who will provide any product, service, plan, or program to
17 any consumer;

18 E. that any person providing a testimonial has purchased, received, or
19 used the product, service, plan, or program;

20 F. that the experience represented in a testimonial of the product, service,
21 plan, or program represents the person's actual experience resulting from the use of
22 the product, service, plan, or program under the circumstances depicted in the
23 advertisement;

24 G. that a consumer will receive legal representation;

25 H. any special connections or relationships with lenders or financial
26 institutions; or
27
28

1 I. any other fact material to consumers concerning any product, service,
2 plan, or program.

3 **V. MONETARY JUDGMENT**

4 IT IS FURTHER ORDERED that:

5 A. Judgment in the amount of Two Million, Three Hundred Forty-Nine
6 Thousand, Eight Hundred Eighty-Five Dollars (\$2,349,885.00) is entered in favor
7 of the Commission and against Corporate Defendants, jointly and severally with all
8 other Defendants, as equitable monetary relief.

9 B. Corporate Defendants are ordered to pay the Commission the
10 judgment amount in Subsection A within seven days of the entry of this Order by
11 electronic fund transfer in accordance with instructions previously provided by a
12 representative of the Commission. Any other entity, person or financial institution
13 holding Corporate Defendants' frozen assets must also transfer those assets to the
14 Commission within seven days of the entry of this Order by electronic fund
15 transfer in accordance with instructions previously provided by a representative of
16 the Commission.

17 C. Corporate Defendants shall take all steps necessary to assist in the
18 transfer of all frozen assets, including those identified in Subsection B. In the
19 event it is necessary to execute additional documents to transfer, liquidate, or
20 assign Corporate Defendant's assets or any other assets surrendered under this
21 Order, Corporate Defendant shall execute such documents within three days of a
22 request from a representative of the Commission.

23 D. The Asset Freeze in the Preliminary Injunction is modified, only with
24 respect to Corporate Defendants. Once all of Corporate Defendants' frozen assets
25 are transferred in accordance with Subsection B, the Asset Freeze will dissolve
26 with respect to Corporate Defendants.

1 E. Corporate Defendants relinquish dominion and all legal and equitable
2 right, title, and interest in all assets transferred pursuant to this Order and may not
3 seek the return of any assets.

4 F. The facts alleged in the Complaint will be taken as true, without
5 further proof, in any subsequent civil litigation by or on behalf of the Commission,
6 including in a proceeding to enforce its rights to any payment or monetary
7 judgment pursuant to this Order, such as a nondischargeability complaint in any
8 bankruptcy case.

9 G. The facts alleged in the Complaint establish all elements necessary to
10 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
11 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
12 estoppel effect for such purposes.

13 H. Corporate Defendants' Taxpayer Identification Numbers (such as
14 Employer Identification Numbers), which Corporate Defendants must submit to
15 the Commission, may be used for collecting and reporting on any delinquent
16 amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

17 I. All money paid to the Commission pursuant to this Order may be
18 deposited into a fund administered by the Commission or its designee to be used
19 for equitable relief, including consumer redress and any attendant expenses for the
20 administration of any redress fund. If a representative of the Commission decides
21 that direct redress to consumers is wholly or partially impracticable or money
22 remains after redress is completed, the Commission may apply any remaining
23 money for such other equitable relief (including consumer information remedies)
24 as it determines to be reasonably related to Corporate Defendants' practices alleged
25 in the Complaint. Any money not used for such equitable relief is to be deposited
26 to the U.S. Treasury as disgorgement. Corporate Defendants have no right to
27
28

1 challenge any actions the Commission or its representatives may take pursuant to
2 this Subsection.

3 J. The Commission may request any tax-related information, including
4 tax returns and other filings, that Corporate Defendants have the authority to
5 release. Within 14 days of receipt of a written request from a representative of the
6 Commission, Corporate Defendants must take all necessary steps (such as filing a
7 completed IRS Form 4506 or 8821) to cause the Internal Revenue Service or other
8 tax authority to provide the information directly to the Commission.

9 **VI. CUSTOMER INFORMATION**

10 IT IS FURTHER ORDERED that Corporate Defendants, their officers,
11 agents, employees, and attorneys, and all others in active concert or participation
12 with any of them, who receive actual notice of this Order, are permanently
13 restrained and enjoined from directly or indirectly:

14 A. disclosing, using, or benefitting from customer information, including
15 the name, address, telephone number, email address, Social Security Number,
16 other identifying information, or any data that enables access to a customer's
17 account (including a credit card, bank account, or other financial account), that any
18 defendant obtained prior to entry of this Order in connection with the marketing or
19 promotion of mortgage assistance relief products or services or debt relief products
20 or services; and

21 B. failing to destroy such customer information in all forms in their
22 possession, custody, or control within 10 days after entry of this Order.

23 Provided, however, that customer information need not be disposed of, and
24 may be disclosed, to the extent requested by a government agency or required by
25 law, regulation, or court order.

1 **VII. ORDER ACKNOWLEDGMENTS**

2 IT IS FURTHER ORDERED that each Corporate Defendant, within 7 days
3 of entry of this Order, must submit to the Commission an acknowledgment of
4 receipt of this Order sworn under penalty of perjury.

5 **VIII. RETENTION OF JURISDICTION**

6 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
7 matter for all purposes of construction, modification, and enforcement of this
8 Order.

9
10 **IT IS SO ORDERED**, this 31st day of May, 2016.

11
12
13 Dated: __May 31, 2016__

14 
15 CORMAC J. CARNEY
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28